

(3) *Matching contributions.* Each plan year, the eligible employer must contribute a matching contribution to the account of each eligible employee on whose behalf elective contributions were made for the plan year. The amount of the matching contribution must equal the lesser of the eligible employee's elective contributions for the plan year or 3% of the eligible employee's SIMPLE compensation for the entire plan year.

(4) *Nonelective contributions.* For any plan year, in lieu of contributing matching contributions described in paragraph (e)(3) of this section, an eligible employer may, in accordance with plan terms, contribute a nonelective contribution to the account of each eligible employee in an amount equal to 2% of the eligible employee's SIMPLE compensation for the entire plan year. The eligible employer may limit the nonelective contributions to those eligible employees who received at least \$5,000 of SIMPLE compensation from the employer for the entire plan year.

(5) *SIMPLE compensation.* Except as otherwise provided, the term *SIMPLE compensation* for purposes of this section means the sum of wages, tips, and other compensation from the eligible employer subject to federal income tax withholding (as described in section 6051(a)(3)) and the employee's elective contributions made under any other plan, and if applicable, elective deferrals under a section 408(p) SIMPLE IRA plan, a section 408(k)(6) SARSEP, or a plan or contract that satisfies the requirements of section 403(b), and compensation deferred under a section 457 plan, required to be reported by the employer on Form W-2 (as described in section 6051(a)(8)). For self-employed individuals, *SIMPLE compensation* means net earnings from self-employment determined under section 1402(a) prior to subtracting any contributions made under the SIMPLE 401(k) plan on behalf of the individual.

(f) *Vesting.* All benefits attributable to contributions described in paragraph (e) of this section must be nonforfeitable at all times.

(g) *Plan year.* The plan year of a SIMPLE 401(k) plan must be the whole calendar year. Thus, in general, a SIM-

PLE 401(k) plan can be established only on January 1 and can be terminated only on December 31. However, in the case of an employer that did not previously maintain a SIMPLE 401(k) plan, the establishment date can be as late as October 1 (or later in the case of an employer that comes into existence after October 1 and establishes the SIMPLE 401(k) plan as soon as administratively feasible after the employer comes into existence).

(h) *Other rules.* A SIMPLE 401(k) plan is not treated as a top-heavy plan under section 416. See section 416(g)(4)(G).

[T.D. 9169, 69 FR 78154, Dec. 29, 2004]

#### **§ 1.401(k)-5 Special rules for mergers, acquisitions and similar events. [Reserved]**

[T.D. 9169, 69 FR 78154, Dec. 29, 2004]

#### **§ 1.401(k)-6 Definitions.**

Unless otherwise provided, the definitions of this section govern for purposes of section 401(k) and the regulations thereunder.

*Actual contribution percentage (ACP) test.* *Actual contribution percentage test* or *ACP test* means the test described in § 1.401(m)-2(a)(1).

*Actual deferral percentage (ADP).* *Actual deferral percentage* or *ADP* means the ADP of the group of eligible employees as defined in § 1.401(k)-2(a)(2).

*Actual deferral percentage (ADP) test.* *Actual deferral percentage test* or *ADP test* means the test described in § 1.401(k)-2(a)(1).

*Actual deferral ratio (ADR).* *Actual deferral ratio* or *ADR* means the ADR of an eligible employee as defined in § 1.401(k)-2(a)(3).

*Cash or deferred arrangement.* *Cash or deferred arrangement* is defined in § 1.401(k)-1(a)(2).

*Cash or deferred election.* *Cash or deferred election* is defined in § 1.401(k)-1(a)(3).

*Compensation.* *Compensation* means compensation as defined in section 414(s) and § 1.414(s)-1. The period used to determine an employee's compensation for a plan year must be either the plan year or the calendar year ending within the plan year. Whichever period is selected must be applied uniformly